

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
DARLA SUE REINICKE	§	
DEBTOR	§	Case No. 03-91150-DML 13
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	§	

MEMORANDUM OPINION

Before the court today is the objection (the “Objection”) of Irene Payne and Hugo De Los Santos (collectively the “Creditors”) to confirmation of Darla Reinicke’s (the “Debtor”) chapter 13 plan (the “Plan”). The Objection alleges, *inter alia*, that the Plan was proposed in bad faith and therefore does not meet the requirements of § 1325(a)(3) of the Bankruptcy Code.¹ The hearing on the Plan was conducted on May 23, 2005 before the court. At the hearing the court heard testimony from the Debtor as well as Hugo De Los Santos. Juan Carlos Martinez acted as co-counsel for the Creditors.

This matter is subject to the court’s core jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(2)(L). This memorandum opinion constitutes the court’s findings of fact and conclusions of law. *See* FED. R. BANKR. P. 7052 and 9014.

¹ 11 U.S.C. §§ 101–1330 (2005), *amended by* 11 U.S.C §§ 101–1532 (2005).

I. Background

The Debtor in this bankruptcy case filed for bankruptcy protection on November 21, 2003. Her bankruptcy petition followed a state court judgment against her as well as a divorce.² On January 18, 2005 the Debtor filed her Plan.

II. Issue

The issue before the court today is whether the Plan proposed by the Debtor meets the requirements of § 1325 of the Bankruptcy Code and, specifically, does the plan meet the good faith requirement of § 1325(a)(3).

III. Discussion

A. Confirmation of a Plan Under §1325

Prior to a debtor receiving a discharge under chapter 13 of the Bankruptcy Code (the “Code”) a plan must be proposed to the court, confirmed by the court and performed by the debtor. (*See* § 1328) The confirmation requirements are set out in § 1325 of the Code. If the plan does not meet the tests of § 1325 than the plan cannot be confirmed. The court notes that denial of confirmation for lack of good faith of a chapter 13 plan under § 1325(a)(3) is a separate issue from dismissal of a chapter 13 plan under § 1307(c) for the same reason.

The subsection of § 1325 at issue before the court today is § 1325(a)(3). This subsection requires that the plan be proposed in good faith and not by any means which are illegal. This subsection has led to a substantial body of law owing in large part to the fact that “good faith” is not defined anywhere in the Code. The meaning of good faith

² Debtor’s now ex-husband is currently in bankruptcy proceedings in the Dallas Division of the Northern District of Texas.

under § 1325(a)(3) has been interpreted in many ways. Section 1325(a)(3) reads as follows:

(a) Except as provided in subsection (b), the court shall confirm a plan if – (3) the plan has been proposed in good faith and not by any means forbidden by law;...

11 U.S.C. §1325(a)(3)

Under Bankruptcy Rule 3015(f) the court may determine that the plan has been proposed in good faith without receiving evidence on the issue if no objection is filed. *See* Fed R. Bankr. Rule 3015(f). In the case before the court today, an objection to the Plan was filed with the court. The Objection raises the issue of good faith. Once this objection is raised, the burden shifts to the debtor. “Debtors have the burden of proving that they have satisfied all the requirements for confirmation of their proposed chapter 13 plan.” *In re Massey*, No. 94-4001, 1995 U.S. Dist. Lexis 12978, at *3; *In re Lewis*, 170 Bankr 861, 865 (Bankr. D.Md. 1994); *In re Huerta*, 137 Bankr. 356, 365 (Bankr. C.D.Cal. 1992). Because the Creditors filed an objection with the court based on § 1325(a)(3), the Debtors now have the burden of showing that the plan was, in fact, filed in good faith. As the *Massey* court noted “[a]lthough a court without objection may find without receiving evidence that a chapter 13 plan was filed in good faith, where there is an objection, more than bare presentation of the plan and provision for payment thereunder is required.” *In re Massey*, 1995 U.S. Dist. Lexis 12978, at *10. As applied to the case before the court today, the Debtor is required to have shown more than a bare presentation of the plan.

In determining whether the Debtor has shown good faith in filing a plan³, the court will look at the totality of the circumstances. *In re Chaffin*, 816 F.2d 1070 (5th Cir. 1987), *later reconsidered on other grounds*, 836 F.2d 215 (5th Cir. 1988); *In re McLaughlin*, 217 B.R. 772 (W.D. Tex. 1998). Using this analysis, courts have noted that “[t]he trick seems to be in not placing too much weight on any single factor, but in the court’s looking at how a number of factors in any given case operate together to betray a plan proposed in bad faith.” *In re McLaughlin*, 217 B.R. 772, 775 (W.D. Tex. 1998). The factors to be considered will differ on a case-by-case basis. “Most fundamentally, a court considering the issue of good faith must determine whether there has been an attempt to abuse the purpose, provisions or spirit of the Bankruptcy Code.” *Beard v. United States Trustee (In re Beard)*, 188 B.R. 220, 226 (W.D. L.A. 1995).

B. Debtor Did Not Overcome the Bad Faith Objection

During oral arguments as well as in their brief the Creditors listed good faith as a ground for denial of confirmation. In open court on the day of the confirmation hearing, Mr. Martinez stated, “Under 11 U.S.C. [§] 1325 it says that the plan has to be proposed in good faith, and our whole theory is that this plan is not proposed in good faith...”. Also, in the process of offering to the court Creditors Exhibit 8, counsel states that the exhibit “goes to the issue of good faith...”. With notice of the Objection and having heard the objection described in open court Debtor’s counsel provided only a bare presentation of the plan and its provisions for payment. Debtor’s counsel did not address the good faith issue at any time during the hearing

³ The § 1325(a)(3) good faith requirement should not be mixed with the § 1325(a)(4) best interests requirement, *See In re Long*, 10 B.R. 880 (D.S.D. 1981).

As discussed above, the Debtor has the burden of showing that the Plan meets the requirements of § 1325. Once an objection to the plan is made that is based on the § 1325(a)(3) good faith requirement, the debtor has the burden of showing that the plan was filed in good faith. The Debtor did not show that the Plan was proposed for an improper purpose and was not an attempt to abuse the provisions of the Code or address any of the other concerns of § 1325(a)(3). Rather, the evidence suggests that Debtor was using chapter 13 – and the Plan – to evade responsibility for dissipating funds belonging to her mother. The court therefore concludes that the Plan does not meet the requirements of § 1325(a)(3), and by extension cannot be confirmed under § 1325 of the Code.

IV. Conclusion

Because the Plan does not meet the requirements of § 1325, the Plan's confirmation must be denied. The Debtor has failed to meet her burden to show that the Plan meets the requirements of § 1325(a)(3) and the court therefore finds that the Plan was proposed in bad faith.

Signed this the 7th day of June 2005.


D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE